

**UNITED STATES DISTRICT COURT
FOR THE SOUTHER DISTRICT OF NEW YORK**

Petition of 2001 Jane F. McCarthy GRAT No. 5,

Petitioner,

For an Order Pursuant to the Federal
Arbitration Act, 9 USC § 1, et. seq.

INDEX No. 07 - CV 5618

Confirming an Arbitration
Award,

-against-

NOTICE OF PETITION
TO CONFIRM ARBITRATION
AWARD

Abbas A. Shah, Linuxor Asset Management,
LLC and Linuxor Capital Management, LLC,

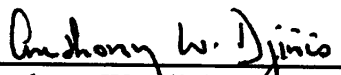
Respondents.

PLEASE TAKE NOTICE that upon the annexed petition of 2001 Jane F. McCarthy GRAT No. 5, duly verified on the ____ day of June, 2007, the Affidavit of Paul J. Bazil and the exhibits annexed thereto, and upon the award of the arbitrators in the arbitration proceeding between the petitioner and respondents conducted before and under the rules of the National Futures Association, delivered on March 15, 2007, and upon the agreement to arbitrate disputes between the parties, dated October 10, 2005, an application will be made before this Court, at Room ____, United States Courthouse, located at 500 Pearl Street in the City, County and State of New York on the ____ day of _____, 2007, at ____ o'clock, or as soon thereafter as counsel can be heard, for an order pursuant to 9 U.S.C. § 9 as follows: (a) confirming the award of the arbitrators,

upon the ground that the award was duly rendered and delivered to Petitioner less than one (1) year prior to this application has not been paid and has not been vacated, modified or corrected under 9 USC § 10 or 11; (b) directing that judgment be entered in favor of Petitioner; (c) granting Petitioner the costs and disbursements of this proceeding; and (d) for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that papers opposing the petition, if any, shall be served at least seven (7) days before the return date of this application.

Dated: New York, New York
June 7, 2007


Anthony W. Djinis, Esq. (bar number: 1672195)
PICKARD AND DJINIS, LLP
1990 M Street, N.W.
Suite 660
Washington, D.C. 20036
Phone: 202-223-4418

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Petition of 2001 Jane F. McCarthy GRAT No. 5,

Petitioner,

For an Order Pursuant to the Federal
Arbitration Act, 9 USC §1, et. seq.
Confirming an Arbitration Award,

INDEX No. 07 - CV 5618

-against-

PETITION TO
CONFIRM ARBITRATION
AWARDS

Abbas A. Shah, Linuxor Asset Management,
LLC and Linuxor Capital Management, LLC,

Respondents.

Petitioner 2001 Jane F. McCarthy GRAT No. 5, by its attorneys, Pickard and
Djinis, LLP, herein respectfully alleges:

Parties

1. Petitioner 2001 Jane F. McCarthy GRAT No. 5 – Article Second is a trust organized under Alaska law. Its principal place of business is 610 East South Temple, Suite 200, Salt Lake City, Utah 84102..
2. Respondent Linuxor Capital Management, LLC (“LCM”) is a Delaware limited liability company. LCM’s last known place of business was 20 Exchange Place, 45th Floor, New York, New York 10005.

3. Respondent Linuxor Asset Management, ("LAM") is a Delaware limited liability company. At all times relevant, LAM's last known place of business was 20 Exchange Place, 45th Floor, New York, New York 10005.
4. Respondent Abbas A. Shah ("Shah") is an individual residing at 200 East 69th Street, Apartment 21A, New York, New York and at all times relevant has been an managing member of Respondents LAM and LCM.

Statement of Facts

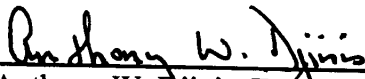
5. On or about August 26, 2005, Petitioner served Respondents with its Demand for Arbitration under the NFA Code of Arbitration and Statement of Claim for Arbitration with supporting exhibit against Respondents with the Arbitration Department of the National Futures Association (the "NFA"). *Affidavit of Paul J. Bazil*, ¶2
6. On or about October 10, 2005, Respondents LAM, LCM and Shah filed Submission Agreements to the NFA in which each provided they submitted "the ...matter in controversy as set forth in the Demand for Arbitration...in accordance with the Bylaws, Rules and Code of Arbitration of the National Futures Association." In addition, in their Submission Agreements to the NFA, Respondents agreed "to abide by and perform any award(s) rendered pursuant to this arbitration proceeding...and voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment." *Affidavit of Paul J. Bazil*, ¶3

7. On or about December 22, 2005, Respondents LAM, LCM and Shah filed a joint Motion to Dismiss and Answer with the NFA. *Affidavit of Paul J. Bazil*, ¶4
8. On or about May 3, 2006, the NFA appointed a three (3) member arbitration panel (the “Arbitration Panel”) to conduct a hearing. *Affidavit of Paul J. Bazil*, ¶5
9. On or about August 14, 2006, the Arbitration Panel denied Respondents’ Motion to Dismiss. *Affidavit of Paul J. Bazil*, ¶6
10. After due notice of the appointment of said Arbitration Panel, and of the hearing dates(s), the hearings on the consolidated claims were held on November 30, 2006, December 1, 2006, January 23, 2007 and January 24, 2007. *Affidavit of Paul J. Bazil*, ¶7
11. Respondents LAM, LCM and Shah appeared through counsel and in person, and had a full and fair opportunity to submit evidence and cross-examine witnesses. *Affidavit of Paul J. Bazil*, ¶8
12. The Arbitration Panel rendered its award after hearing testimony and reviewing evidence presented by Petitioners in support of its claim against Respondents and evidence presented by Respondents in defense of such claims. Said award was duly issued by the Arbitration Panel on March 5, 2007 (the “Award”). On or about March 15, 2007, the Award was duly served by the NFA upon Respondents. *Affidavit of Paul J. Bazil*, ¶9

13. The Arbitration Panel awarded Petitioner 2001 Jane F. McCarthy GRAT No. 5 compensatory damages and interest in the amount of \$1,216,453. *Affidavit of Paul J. Bazil*, ¶9
14. Pursuant to Section 10(g) of the NFA Code of Arbitration, Respondents were required to comply with the award by making payment to Petitioner within thirty (30) days from the date of transmittal of the Award by the NFA. As of April 15, 2007 and through present, Respondents have failed to comply with the Award and have made no payment whatsoever to Respondents. *Affidavit of Paul J. Bazil*, ¶10
15. Less than one (1) year has passed since the date of delivery of the Awards and Respondents have not moved to vacate or modify the Awards, or any of them, under 9 U.S. C. §10 or 11. *Affidavit of Paul J. Bazil*, ¶11
16. The Award is fully enforceable in accordance with its terms and should be confirmed by this Court.
17. No previous application has been made for the relief requested herein to this Court or any other court having jurisdiction thereof. *Affidavit of Paul J. Bazil*, ¶12

WHEREFORE, Petitioner respectfully requests that an Order be made herein confirming the Award, and directing that judgment be entered thereon in favor of Petitioner and against Respondents, together with the costs and disbursements of this proceeding, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 7, 2007


Anthony W. Djinis, Esq. (bar number: 1672195)
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-against-

Abbas A. Shah, Linuxor Asset Management,
LLC and Linuxor Capital Management, LLC,

Respondents.

**AFFIDAVIT OF PAUL J. BAZIL IN SUPPORT OF PETITION
TO CONFIRM ARBITRATION AWARD**

1. I am an attorney and a partner of Pickard and Djinis LLP (P&D) and am personally familiar with the facts pertinent to this matter. I submit this affidavit in support of the Petition to Confirm Arbitration Award duly issued on March 5, 2007 in an arbitration proceeding between the Petitioner and Respondents conducted before and under the rules of the National Futures Association entitled 2001 Jane F. McCarthy GRAT No. 5 v. Abbas A. Shah, Linuxor Asset Management, LLC and Linuxor Capital Management, LLC, 05-NFA-133. I have been admitted to practice in the State of California since 1988 and the District of Columbia since 1990. I have also been

admitted to the bars of the United States District Courts for the Eastern, Southern, Northern and Central Districts of California since 1989, the United States District Court for the District of Columbia since 1990 and the United States Court of Appeals for the Ninth Circuit since 1990.

2. On or about August 26, 2005, Petitioner served Respondents with its Arbitration Claim under the NFA Code of Arbitration and its Statement of Claim for Arbitration with supporting exhibit against Respondents with the Arbitration Department of the National Futures Association (the "NFA"). A true and correct copy of the Statement of Claim is attached hereto as Exhibit A.
3. On or about October 10, 2005, Respondents Linuxor Asset Management LLC. ("LAM"), Linuxor Capital Management, LLC ("LCM") and Abbas A. Shah ("Shah") filed Submission Agreements to the NFA in which each provided they submitted "the ...matter in controversy as set forth in the Demand for Arbitration...in accordance with the Bylaws, Rules and Code of Arbitration of the National Futures Association." In addition, in their Submission Agreements to the NFA, Respondents agreed "to abide by and perform any award(s) rendered pursuant to this arbitration proceeding...and voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment." A true and correct copy of Respondents' Submission Agreements to the NFA are attached hereto as Exhibit B.

4. On or about December 22, 2005, Respondents LAM, LCM and Shah filed a joint Motion to Dismiss and Answer with the NFA. A true and correct copy of Respondents' Motion to Dismiss and Answer are attached hereto as Exhibit C.
5. On or about May 3, 2006, the NFA appointed a three (3) member arbitration panel (the "Arbitration Panel") to conduct a hearing. A true and correct copy of a letter from NFA to all parties dated May 3, 2006 is attached hereto as Exhibit D.
6. On or about August 14, 2006, the Arbitration Panel denied Respondents' Motion to Dismiss. A true and correct copy of the Order of the NFA dated August 14, 2006 is attached hereto as Exhibit E.
7. After due notice of the appointment of said Arbitration Panel, and of the hearing dates(s), the hearings on the consolidated claims were held on November 30, 2006, December 1, 2006, January 23, 2007 and January 24, 2007.
8. Respondents LAM, LCM and Shah appeared through counsel and in person, and had a full and fair opportunity to submit evidence and cross-examine witnesses.
9. The Arbitration Panel rendered its award after hearing testimony and reviewing evidence presented by Petitioner in support of its claim against Respondents and evidence presented by Respondents in defense of such claims. Said award was duly issued by the Arbitration Panel on March 5, 2007 (the "Award"). The Arbitration Panel awarded Petitioner 2001 Jane F. McCarthy GRAT No. 5 compensatory damages and interest in the amount of

\$1,216,453. On or about March 15, 2007, the Award was duly served by the NFA upon Respondents by sending copies via two-day Federal Express, in envelopes to Respondents' attorneys. A true and correct copy of the Award and certificate of service upon Respondents is attached hereto as Exhibit F.


10. Pursuant to Section 10(g) of the NFA Code of Arbitration, Respondents were required to comply with the award by making payment to Petitioner within thirty (30) days from the date of transmittal of the Award by the NFA. As of April 15, 2007 and through present, Respondents have failed to comply with the Award and have made no payment whatsoever to Petitioner. A true and correct copy of the Notice of Unpaid Award is attached hereto as Exhibit G.
11. Less than one (1) year has passed since the date of delivery of the Awards and Respondents have not moved to vacate or modify the Awards, or any of them, under 9 U.S.C. §10 or 11.
12. No previous application has been made for the relief requested herein to this Court or any other court having jurisdiction thereof.

Dated: June 8, 2007



Paul J. Bazil

Sworn to before me this 8th date of June, 2007



Notary Public
District of Columbia